

EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3
4 GABANA GULF DISTRIBUTION, LTD., ET AL,)
5 PLAINTIFF,)
6 VERSUS)CASE NO.C06-2584(CRB(EDL)
7)JUNE 26, 2007
8 GAP INTERNATIONAL SALES, INC. ET AL.)SAN FRANCISCO, CALIFORNIA
9 DEFENDANTS.)

10 _____)
11 BEFORE THE HONORABLE ELIZABETH D. LAPORTE
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

FOR PLAINTIFFS: LITCHFORD & CHRISTOPHER

14 BY: KEITH E. ROUNSAVILLE, ESQ.
BANK OF AMERICA CENTER
15 390 NORTH ORANGE AVENUE
ORLANDO, FLORIDA 32802

16
HOWARD RICE NEMEROVSKI CANADY FALK & RABKIN
17 BY: SHAUDY DANAYE-ELMI
ATTORNEY AT LAW
18 THREE EMBARCADERO CENTER SEVENTH FLOOR
SAN FRANCISCO, CA. 94111

19
FOR DEFENDANTS: KEKER & VAN NEST LLP

20 BY: CHRISTA MARTIN ANDERSON
ATTORNEY AT LAW
21 DAN JACKSON, ESQ..
ROSE DARLING, ATTORNEY AT LAW
22 710 SANSOME STREET
SAN FRANCISCO, CALIFORNIA 94111

23
24 REPORTED BY: JUANITA GONZALEZ
25 CSR NO. 3003

1 JUNE 26, 2007 SAN FRANCISCO, CALIFORNIA

2 THE CLERK: CALLING C06-2584, GABANA GULF DISTRIBUTION,

3 LTD., ET AL VERSUS GAP INTERNATIONAL SALES, INC., ET AL.

4 YOUR APPEARANCES, PLEASE, COUNSEL.

5 MR. ROUNSAVILLE: KEITH ROUNSAVILLE FOR GABANA GULF

6 DISTRIBUTION.

7 MR. JACKSON: DAN JACKSON, KEKER AND VAN NEST, FOR GAP.

8 MS. DARLING: ROSE DARLING, KEKER AND VAN NEST AND

9 CHRISTA ANDERSON.

10 THE COURT: I HAVE BEEN ASKING MYSELF, WHY IS IT THAT

11 IN NINE YEARS I CAN'T RECALL SEEING SUCH A BROAD FIGHTING OVER

12 PRIVILEGE AND ALL THE REST, AND SO MUCH PAPER FILED ON A SIMILAR

13 ISSUE. MAYBE I AM HAVING A FAILURE OF MEMORY, BUT THIS SEEMS

14 UNUSUAL. I SUSPECT BECAUSE IT'S USUALLY SO EXPENSIVE TO DO ALL

15 OF THIS.

16 THE COURT DOES HAVE A SORT OF A PUBLIC INTEREST IN

17 AVOIDING OVER-DESIGNATION OF THINGS AS PRIVILEGED TO THE EXTENT

18 THAT THEY BECOME PART OF THE COURT FILES, THE COURT DOCUMENTS,

19 AND SO ON, AND THAT'S REFLECTED IN SOME OF THE CASE LAW; SO IN

20 THAT SENTENCE WE ARE HERE TO TRY -- WE HAVE A DUTY TO POLICE

21 OVER-DESIGNATION OF THINGS AS CONFIDENTIAL, SPECIALLY IN SO FAR

22 AS THEY BECOME PART OF COURT FILINGS, TO REQUIRE GOOD CAUSE AS

23 TO THINGS FILED IN CONJUNCTION WITH DISCOVERY MOTION, AND EVEN

24 STRONGER CAUSE, TO THE EXTENT IT BECOMES PART OF THE SUBSTANTIVE

25 MOTION.

1 SO I THINK THAT ANOTHER ISSUE THAT IS PROBABLY
2 DIFFERENT IN THIS CASE IS THAT IT DOES SEEM LIKE THERE HAS BEEN
3 AN INABILITY TO HAVE MEANINGFUL MEET AND CONFER, AND THERE ARE
4 ISSUES, AND I DON'T WHY THAT IS. I THINK I'VE SEEN YOU HERE
5 BEFORE IN THIS VERY CASE AND I THINK I GAVE A SORT OF A
6 PROTECTORY COMMENT TO ATTEMPT TO TRY TO HEAD OFF THOSE THINGS,
7 THIS KIND OF THING. OBVIOUSLY, THAT DID NOT HAVE THE INTENDED
8 EFFECT.

9 FOR EXAMPLE, IN GABANA GULF'S PAPERS THERE IS A LOT OF
10 POINTING OUT THAT THE BURDEN OF PERSUASION IN THE PROTECTIVE
11 ORDER AND UNDER OUR RULES WOULD BE ON THE PARTY ASSERTING THAT
12 SOMETHING IS PRIVILEGED AND SHOULD BE SEALED. THAT'S TRUE, BUT
13 THAT'S NOT THE SAME AS SAYING, "THEREFORE WE CAN'T DISCUSS IT
14 WITH YOU UNLESS YOU START JUSTIFYING EVERYTHING POINT BY POINT".
15 THAT IS NOT A MEANINGFUL MEET AND CONFER. NOW, I KNOW YOU SAID
16 THAT'S NOT THE COMPLETE VERSION. TO SOME EXTENT, THAT IS TRUE.
17 BUT I THINK THE SAMPLING SUGGESTION THAT WAS FLOATED EARLIER
18 MADE A LOT OF SENSE. I'M NOT SURE -- I REGRET THAT BROKE DOWN.
19 ON THE OTHER HAND, I WILL SAY THAT I THINK THAT GAP SHOULD BE
20 VERY EMBARRASSED THAT THEY BROUGHT AN AGGRESSIVE MOTION TO
21 UPHOLD CONFIDENTIALITY DESIGNATION AND THEN HAD TO ADMIT THAT A
22 NUMBER OF SPECIFIC EXAMPLES THAT WERE PROVIDED BY THE PLAINTIFF
23 WERE INDEFENSIBLE, AND I THINK SOME OF THE ADDITIONAL ONES THAT
24 YOU'RE STILL INSISTING ON ARE INDEFENSIBLE. SO IT REALLY IS
25 TROUBLING. THERE DOESN'T SEEM TO -- AND GAP, I THINK, IS

1 MAKING A FUNDAMENTAL ERROR THAT THE PROTECTIVE ORDER PROTECTS
2 ANYTHING THAT YOU'VE CONTRACTUALLY AGREED IN THE PAST TO KEEP
3 QUIET.

4 CONTRACT IS ONE THING. WHETHER IT QUALIFIES FOR
5 PROTECTIVE ORDER UNDER THE RULE THAT IS CITED AND IS ACTUALLY
6 PART OF A PROTECTION ORDER -- I THINK THE JUDGE WOULDN'T HAVE
7 SIGNED IT. IT HAS TO MEET THE STANDARD FOR PROTECTION. SO IF
8 SOMETHING IS STALE, YOU KNOW, IT MIGHT HAVE BEEN CONFIDENTIAL IF
9 IT WAS CURRENT INFORMATION ABOUT PRICING, BUT IF IT IS, FOR
10 EXAMPLE, 10 YEARS OLD, IT'S PROBABLY NO LONGER ENTITLED TO
11 PROTECTION. SO THE MERE FACT THAT YOU HAVE SOME PRIVATE
12 CONTRACTUAL ARRANGEMENT, DOESN'T MEAN NOW YOU CAN DEFEND THAT
13 DESIGNATION HERE IN THIS LITIGATION.

14 I FEEL THAT THERE IS A FAILURE ON BOTH SIDES TO BE
15 REALISTIC AND COMPROMISE, AND I AM TROUBLED BY THAT. AND I
16 DON'T -- I THINK I'VE BEEN SPARED A FULL STACK OF DOCUMENTS, AND
17 FOR THE PARTIES TO SAY, "WE CAN'T GO THROUGH ALL OF THIS, IT'S
18 TOO MUCH TROUBLE FOR US. YOU, JUDGE, SHOULD GO THROUGH ALL OF
19 THIS --" I MEAN -- THIS IS NOT -- I AM NOT A LITIGANT AND IT'S
20 COMPLETELY IMPRACTICAL. SO I DON'T KNOW WHAT EVERYBODY IS
21 THINKING HERE, BUT IT'S REALLY IMPRACTICAL.

22 NOW, ON THE GABANA GULF MOTION, WITH EXAMPLES OF
23 INCONSISTENTLY REDACTED DOCUMENTS -- I MEAN -- THAT AGAIN IS THE
24 KIND OF TEDIOUS EXERCISE THAT -- IT SHOWS INCONSISTENCY, AND
25 THAT OUGHT TO BE CLEANED UP, BUT I DON'T KNOW HOW THE COURT IS

1 SUPPOSED TO ADDRESS ALL OF THAT. SO THERE IS OVER-DESIGNATION,
2 AND I THINK ITS BEEN PROVEN, AND I THINK THAT GAP HAS HAD TO
3 ADMIT IT. ON THE OTHER HAND, A LOT OF THE CLAIMS OF PRIVILEGE
4 THAT GAP HAS MADE ARE VALID. SO THE IDEA I'M SOMEHOW GOING TO
5 SORT THROUGH EVERY SINGLE ONE, DOESN'T MAKE SENSE TO ME.

6 GO AHEAD.

7 MR. JACKSON: YES, YOUR HONOR. WE COMPLETELY AGREE
8 THAT THIS SHOULD HAVE ALL BEEN A -- CAPABLE OF RESOLUTION
9 THROUGH MEET AND CONFER, AND WE TRIED VERY HARD TO DO THAT.

10 THE COURT: WELL, I WILL SAY I THINK PART OF THE FAULT
11 IS ON YOUR SIDE. I THINK IT'S ON BOTH SIDES, BECAUSE THE IDEA
12 THAT -- I THINK YOU COULD HAVE FIGURED OUT SOME OF THE EXAMPLES
13 BETTER, COMPLETELY UNJUSTIFIED THAT THEY CAME UP IN THE
14 PLAINTIFF'S PAPERS.

15 MR. JACKSON: WHAT WE PROPOSED TO DEAL WITH SPECIFIC
16 EXAMPLES AND COME TO A RESOLUTION WHETHER THINGS SHOULD HAVE
17 BEEN DESIGNATED OR NOT THAT MADE SENSE AND, PARTICULARLY, WE
18 FOCUSED ON DOCUMENTS THAT WERE MEANINGFUL IN THE LITIGATION.
19 THE PROBLEM IS, UNFORTUNATELY, UNLIKE THE NORTHERN DISTRICT'S
20 MODEL PROTECTIVE ORDER, WE HAD TO -- BECAUSE THEY OBJECTED TO
21 EVERY SINGLE DESIGNATION, WE HAD TO BRING A MOTION WITHIN A
22 PARTICULAR AMOUNT OF TIME.

23 I AGREE COMPLETELY WITH YOUR HONOR THAT WE SHOULD HAVE
24 BEEN ABLE TO TRY TO MEET AND CONFER WITH THEM ON SPECIFIC
25 CATEGORIES OF DOCUMENTS OR SPECIFIC DOCUMENTS. WE HAD QUITE A

1 BIT OF BACK AND FORTH ON THIS AND, UNFORTUNATELY, BY REQUESTS,
2 WE DIDN'T GET AN EXTENSION OF TIME TO DO THAT MEET AND CONFER,
3 WITHOUT BRINGING A MOTION, AND WE HAD TO BRING A MOTION IN ORDER
4 TO PROTECT CONFIDENTIAL DOCUMENTS BECAUSE, AS I SAID, THEY
5 CHALLENGED EVERY SINGLE DOCUMENT THAT WAS DESIGNATED
6 CONFIDENTIAL OR HIGHLY CONFIDENTIAL, IN THE PRODUCTION.

7 THEY TOOK THE SAME TACTIC WITH THE PRIVILEGED
8 DOCUMENTS. INSTEAD OF BRINGING SPECIFIC EXAMPLES, THEY ASSERTED
9 BROADLY THAT GAP HAD WAIVED PRIVILEGE WITH RESPECT TO EVERY
10 DOCUMENT THAT THEY CLAIMED PRIVILEGE ON, AND I THINK GABANA'S
11 REPLY BRIEF IN THIS CASE IS REVEALING IN THIS RESPECT, BECAUSE
12 DURING THE MEET AND CONFER, GABANA ASSERTED PRIMARILY, AT LEAST
13 OUR UNDERSTANDING, THAT GAP'S PRIVILEGE LOG WAS LATE AND
14 THEREFORE SOMEHOW THAT THAT WAS A GROUNDS FOR WAIVER OF THE
15 PRIVILEGE; BUT ON REPLY, THEY CHANGED THAT ENTIRELY AND SAID
16 THAT THAT'S NOT REASON ENOUGH TO WAIVE PRIVILEGE AND INSTEAD --
17 AND IN THEIR REPLY WE RESPONDED POINT BY POINT TO THEIR LEGAL
18 ARGUMENTS, BUT IN REPLY, THEY DIDN'T RESPOND TO A SINGLE LEGAL
19 ARGUMENT AND INSTEAD CITED A NINTH CIRCUIT CASE FOR THE
20 PROPOSITION THAT WE WERE REQUIRED TO PRESENT DECLARATIONS FROM
21 ATTORNEYS RESPONSIBLE FOR PREPARING THE DOCUMENTS, WHICH IS NOT
22 THAT CASE -- IN RE GRAND JURY INVESTIGATION, 974F.2D, 1068.
23 THAT'S NOT WHAT THE CASE HELD.

24 FINALLY, THEY WENT THROUGH A LABORIOUS EXAMINATION OF
25 A SINGLE DOCUMENT TO SHOW, AS YOU COMMENTED, INCONSISTENCIES,

1 AND WE SUBMIT THAT IN A LARGE DOCUMENT PRODUCTION, IT'S NOT
2 PARTICULARLY SURPRISING, AND OFTEN OCCURS THAT DOCUMENTS ARE
3 INADVERTENTLY PRODUCED OR WITHHELD. INDEED, IN THIS CASE,
4 GABANA PRODUCED A FEW DOCUMENTS THAT WE EXAMINED AND FELT WE
5 PROBABLY INADVERTENTLY PRODUCED FOR PRIVILEGE. WE CONTACTED
6 THEM, ALERTED THEM, ASKED, "DID YOU MEAN TO PRODUCE THESE?"
7 BECAUSE WE FELT THAT THAT WAS THE PROFESSIONAL, COURTEOUS WAY
8 APPROACH IT. THEY WITHDREW THOSE DOCUMENTS LATER IN CONNECTIN
9 WITH THIS MOTION.

10 THE COURT: OKAY.

11 MR. JACKSON: WE FEEL THAT SPIRIT OF PROFESSIONAL
12 COOPERATION SHOULD BE EXTENDED TO US.

13 THE COURT: AS A PRACTICAL MATTER, I DON'T THINK ANY OF
14 THE PARTIES HAVE FOCUSED ON PROVIDING TO THE COURT A WAY TO
15 DECIDE THIS, OTHER THAN JUST GENERALLY SAY "GO BACK AND MEET AND
16 CONFER," WHICH I AGREE WITH, BUT GIVEN THE DISMAL RECORD SO FAR,
17 IS NOT SUFFICIENT.

18 TAKING, FOR EXAMPLE, YOUR OPPOSITION TO THE PLAINTIFF'S
19 MOTION TO COMPEL -- I MEAN -- ONE OF THE THINGS THAT THEY
20 COMPLAIN ABOUT THE MOST IS THE REDACTION OF THE SUBJECT LINES
21 AND THE E-MAILS, WHICH MAKES IT HARDER FOR THEM TO TELL WHETHER
22 SOMETHING IS PRIVILEGED OR NOT PRIVILEGED; AND I AM WONDERING,
23 UNLESS THE SUBJECT LINE REALLY CONTAINS ATTORNEY WARRANTS, THIS
24 WOULD BE OPENING THE DOOR TO DISASTROUS LIABILITY -- "PAY
25 ATTENTION, URGENT." I CAN SEE YOU COULD REDACT THAT, BUT I'M

1 WONDERING WHETHER YOU CAN UNREDACT EVERYTHING ELSE WITH A COL
2 ORDER AND A STIPULATION THAT THAT WILL NOT BE CONSTRUED AS A
3 WAIVER OF SOME KIND. THAT WILL MAKE IT EASIER FOR THE PLAINTIFF
4 TO ASSESS THE CLAIMS OF PRIVILEGE.

5 THEY RAISE, FOR EXAMPLE, THE ISSUE OF THE IN-HOUSE
6 COUNSEL WHO HAS ALSO BEEN A DIRECTOR OF THE DIVISION. THAT'S A
7 LEGITIMATE ISSUE, BUT I DON'T THINK THE COURT SHOULD HAVE TO GO
8 THROUGH EVERY SINGLE DOCUMENT TO DETERMINE WHICH SIDE THAT FALI
9 ON. I THINK YOU ALL HAVE TO COME UP WITH A MORE PRACTICAL WAY
10 TO RESOLVE THAT. THE MERE FACT THAT SHE HAS A JD IS NOT ENOUGH.
11 ON THE OTHER HAND, IT COULD WELL BE THAT SHE WAS ACTING IN A
12 LEGAL CAPACITY. I DON'T KNOW.

13 GAP MAKES A GOOD POINT; THAT DRAFTS OF DOCUMENTS
14 PREPARED BY ATTORNEYS THAT ARE NOT THE SAME AS THE FINAL VERSION
15 THAT IS PROVIDED TO THE OTHER SIDE, ARE PROBABLY PRIVILEGED IN
16 MOST CASES. I AGREE WITH THAT. SO THAT IS A CASE OF A
17 PLAINTIFF OVERREACHING. TO THE EXTENT THAT GAP HAS NOW
18 EXPLAINED THAT SOME OF THESE DOCUMENTS WERE HELD AS WORK PROD
19 HAD TO DO WITH ANTICIPATING LITIGATION WITH A THIRD PARTY,
20 SOLKA, THAT WOULD BE A LEGITIMATE REASON.

21 IN GENERAL, TO THE EXTENT THAT WE ARE TALKING NOT ABOUT
22 ATTORNEY/CLIENT WORK PRODUCT, BUT TRADE SECRETS AND THE
23 CONFIDENTIALITY, IT SEEMS TO ME AN AWFUL LOT OF THE STUFF THAT
24 GAP IS TRYING TO PROTECT IS SO STALE IT'S HARD TO BELIEVE THAT
25 THERE IS STILL ANY SECRET THERE, AND I DON'T SEE THAT ANALYSIS

1 GRAPHICALLY ON THE DEFENSE SIDE.

2 I'LL GO THROUGH SOME SPECIFIC EXAMPLES AND PROVIDE SOME
3 GUIDANCE ON SOME OF YOUR MOTIONS. BUT THEN I THINK WE'VE GOT TO
4 COME UP WITH SOME PRACTICAL WAY TO DEAL WITH ALL THIS WITHOUT
5 HAVING YOU HAVE SOME IMPACT AT MEET AND CONFER AND BEING RIGHT
6 BACK HERE. THAT'S THE LAST THING I WANT TO SEE.

7 MS. ANDERSON: CHRISTA ANDERSON FOR GAP.

8 MAY I MAKE A PROPOSAL? WE WOULD FIND IT VERY HELPFUL
9 TO HAVE GUIDANCE FROM YOUR HONOR TO HELP US PURSUE A MEET AND
10 PROCESS, BECAUSE ITS BECOME EXCEEDINGLY DIFFICULT TO DO THAT IN
11 THIS CASE. BUT ONE IDEA I HAD IS, WITH YOUR PRINCIPLES OF
12 GUIDANCE, WE CAN GO BACK AND TRY TO COME UP WITH A PLAN FOR
13 RESOLVING THE REMAINING ISSUES. IF WE AGREE ON THE PLAN, THEN
14 YOU WOULD NEVER HAVE TO HEAR FROM US AGAIN, HOPEFULLY. AND IF
15 WE CAN'T AGREE, PERHAPS WE COULD EACH AGREE ON A DATE TO SUBMIT
16 A WRITTEN PROPOSAL TO YOUR HONOR FOR APPROVAL OR DISAPPROVAL O
17 ADJUSTMENT. WE ARE ANXIOUS TO COME UP WITH A WAY TO WORK WITH
18 GABANA AND HAVE BEEN THROUGHOUT THIS PROCESS. WE'RE HAPPY TO D
19 IT.

20 THE COURT: I THINK THAT IS A GOOD SUGGESTION.

21 LET ME -- I WANT TO HEAR FROM YOU, BUT LET ME, WHILE I'M FOCUSED
22 ON IT, GO THROUGH SOME OF THESE EXAMPLES OF THE STILL DISPUTED
23 DOCUMENTS THAT ARE SEALED.

24 OKAY. ALL RIGHT. SO LET ME GO THROUGH THESE DOCUMENTS
25 THAT ARE STILL DISPUTED THAT WERE ATTACHED TO THE

1 FENDER(PHONETIC)DECLARATION. A LOT OF E-MAILS. NORMALLY, YOU
2 WOULD WANT TO SEGREGATE OUT WHICH OF THE E-MAILS, WHICH PARTS O
3 THESE ARE CONFIDENTIAL AND WHICH AREN'T. BUT AS I UNDERSTAND
4 IT, WHAT GAP IS SAYING IS THERE ARE PRACTICAL PROBLEMS WITH THE
5 DATA BASE ASSIGNMENT OF CONFIDENTIAL DESIGNATION, ONLY AT THE
6 DOCUMENT LEVEL, NOT PAGE LEVEL. IF SO, IT SEEMS TO ME THAT IT'S
7 NOT WORTH THE TROUBLE UNLESS THERE IS SOMETHING SPECIFIC TO BE
8 GAINED BY IT ON THE PLAINTIFF'S SIDE. SO YOU OUGHT TO FOCUS ON
9 WHETHER THERE IS SOMETHING PREJUDICIAL OR TROUBLESOME.

10 IN GENERAL, IT'S CERTAINLY A PRACTICAL PROBLEM, THE
11 MORE THINGS -- THE PLAINTIFF CORRECTLY POINTS OUT -- THE MORE
12 THINGS THAT ARE CONFIDENTIAL -- AND, OF COURSE, EVEN MORE SO,
13 ATTORNEYS' EYES ONLY -- THE MORE TROUBLE IT IS FILING DOCUMENTS
14 IN THE COURT. THE CLERK'S OFFICE HATES IT. YOU GOT WITNESS
15 PROBLEMS AND ALL THE REST. THAT'S WHY WE HAVE THE POLICIES THAT
16 WE DO.

17 ON THE OTHER HAND, I DON'T LIKE TO SEE JUST WASTED TIME
18 AND EFFORT FOR NO PARTICULAR PURPOSE. SO I AM NOT SURE HOW
19 THESE CAN BE RESOLVED, BUT THOSE ARE MY COMMENTS.

20 "W" PHOTOGRAPHS DOESN'T APPEAR TO ME TO BE ANYTHING
21 SECRET, AND I THINK "W" IN GENERAL SHOULD NOT BE. THE ONLY
22 EXCEPTION, POSSIBLY, IS SOME RETAIL PRICES IN EUROS COMPARED TO
23 OTHER PEOPLE'S PRODUCTS, BUT DOESN'T SAY HOW OLD THEY ARE. IF
24 IT'S OLD, I THINK THERE IS NOTHING TO THAT, AND IT'S DUBIOUS
25 WHETHER EVEN -- I MEAN -- THE FACT YOU SELECTED OUT CERTAIN

1 PUBLIC INFORMATION, YOU COULD ARGUE HAS SOME CONFIDENTIALITY,
2 BUT THE FACT IS, A GAP SWEATSHIRT VERSUS A HILLFINGER SWEATSHIRT
3 VERSUS SOMEBODY ELSE'S SWEATSHIRT, THAT'S ALL PUBLIC
4 INFORMATION, AND ON TOP OF THAT, IT'S OLD, I THINK. IF IT'S NOT
5 2007, I JUST REALLY QUESTION IT, I QUESTION WHETHER THAT SHOULD
6 BE CONFIDENTIAL, BUT I DON'T KNOW HOW OLD IT IS.

7 EXHIBIT F, THE BILLS OF LADING, I HAVEN'T HAD A CHANCE
8 TO LOOK AT ALL OF THOSE. THEY DO HAVE MORE INFORMATION THAN
9 JUST WHAT WAS SHIPPED, CUSTOMERS, ETCETERA, MAY WELL BE
10 CONFIDENTIAL. AGAIN, I DON'T KNOW HOW OLD SOME OF IT IS. SO TO
11 THE EXTENT THAT IT'S STALE, I THINK THAT IS A FACTOR. "BB,"
12 THE MARCH, 2005 UP-DATE AND DIRECTION ON GAP PLANS, I THINK IS
13 CONFIDENTIAL, AND THAT WAS PROPERLY DESIGNATED.

14 "DD," STORE VISIT, DOESN'T HAVE A DATE. THAT WOULD BE
15 A FACTOR I WOULD WANT TO KNOW, BUT, IN GENERAL, IT'S SO OBVIOUS,
16 IT DOESN'T SEEM TO ME "IS THE STORE CLEAN, ARE THE SALES STAFF
17 FRIENDLY?" I MEAN -- I THINK I WHO HAVE ABSOLUTELY NO BUSINESS
18 EXPERTISE OR SALES TRAINING OR ANYTHING ELSE, COULD COME UP WITH
19 THOSE. I'M VERY DUBIOUS THAT IT SHOULD BE TREATED CONFIDENTIAL.

20 THE MAP OF CHINA -- I DON'T KNOW WHAT THE DATE IS.
21 THERE IS SOME STARS RIGHT ALONG THE COAST. AGAIN, I DON'T KNOW
22 HOW -- THEY'RE NOT VERY SPECIFIC LOCATIONS, I WOULD THINK, LIKE
23 THE CORNER, SO FORTH, OF THIS PARTICULAR INTERSECTION, WOULD BE
24 PRIVILEGED. IT MIGHT BE. IT'S BORDERLINE, BUT IF IT'S OLD, I
25 WOULD QUESTION IT.

1 A "II," A LETTER REGARDING SAMPLES OF DEFECTIVE
2 T-SHIRTS, I DON'T THINK IS CONFIDENTIAL. THE INVOICES OF
3 PEOPLE'S TRAVEL EXPENSES -- YOU KNOW -- LOOKING THROUGH THEM --
4 I MEAN -- I HAVE TO SAY AS A JUDGE, I HAVE TO BARE TO THE PUBLIC
5 EVERY SINGLE DETAIL OF ANY REIMBURSEMENT I GET, SO I MAY BE LESS
6 SYMPATHETIC WITH THAT THAN IN TRYING TO PUT MYSELF IN THE PLACE
7 OF A NORMAL, PRIVATE CITIZEN IS A BIT DIFFICULT GIVEN HOW MUCH
8 DISCLOSURE WE HAVE; BUT IT SEEMS TO ME IN GENERAL, YOUR BUSINESS
9 RECEIPTS AND SO FORTH, ARE NOT PRIVATE. BUT TO THE EXTENT THAT
10 THERE ARE FREQUENT FLYER NUMBERS IN THERE OR MAYBE TELEPHONE
11 NUMBERS THAT WERE CALLED, SOME OF THEM ARE THERE, THOSE PROBAB
12 ARE PRIVATE.

13 THEN THE QUESTION BECOMES, IS IT WORTH THE TEDIOUS
14 EXERCISE OF REDACTING THOSE. AND THERE HAS TO BE SOME REASON,
15 BUT AT SOME POINT IF IT'S COSTING MILLIONS OF DOLLARS TO DO IT,
16 THAT IS A FACTOR, TOO. THERE HAS TO BE A REASON WHY IT'S
17 IMPORTANT. I DON'T HAVE ANY IDEA IF ANY OF THIS STUFF IS
18 IMPORTANT TO THE CASE. PROBABLY TO THE EXTENT IT SHOWS WHERE AN
19 EXECUTIVE WAS, WHEN AND WHO THEY WERE MEETING WITH, I CAN
20 IMAGINE IF IT'S DURING OPERATIVE DISPUTED PERIOD, THAT IT COULD
21 BE RELEVANT, BUT... OKAY.

22 SO THOSE ARE SOME TAKES ON SPECIFIC DOCUMENTS. I THINK
23 I GAVE SOME GUIDANCE ON THE PRIVILEGE ISSUES. I MEAN, IT
24 DEPENDS. I WOULD BE WILLING IF PART OF THE PLAN IS TO HAVE A
25 VERY, VERY LIMITED, LIKE A HANDFUL OF DOCUMENTS AS EXAMPLES, THE

1 PLAINTIFF COULD PICK THE THINGS THAT ARE PARTICULARLY TELLING
2 AND IMPORTANT OF IMPROPER DESIGNATIONS AND I WOULD REVIEW THOSE
3 IN-CAMERA, BUT I'M NOT GOING TO DO IT WHOLESALE. SO, AS I SAY,
4 PROBABLY UNREDACTING THE SUBJECT LINES COULD BE USEFUL.

5 THOSE ARE SOME OF MY GUIDANCE. LET ME HEAR FROM THE
6 PLAINTIFF.

7 MR. ROUNSAVILLE: YOUR HONOR, KEITH ROUNSAVILLE.

8 AS FOR THE GOOD FAITH EFFORT TO MEET AND CONFER, I
9 WORKED EXTRAORDINARILY HARD TRYING TO CONVINCE GAP TO RESPOND
10 MY APRIL 2ND 2007 LETTER IN WHICH I OUTLINE IN DETAIL ISSUES
11 WITH THE GAP PRIVILEGE LOG. THE RESPONSES WERE, "WE'RE NOT
12 GOING TO TALK TO YOU. I DON'T HAVE TO TALK TO YOU". THAT'S THE
13 POSITION THAT THEY MAINTAINED THROUGHOUT. I SENT COPIES OF
14 LETTERS TO DERALYN DURY(PHONETIC), CHRISTA ANDERSON, ROSE
15 DARLING, AND DANIEL JACKSON. I HAVE NEVER HEARD A WORD CALLING
16 ME, ALTHOUGH I INVITED THEM TO CALL, FROM ANY OF THESE PEOPLE,
17 SO I TRIED TO CALL THEM. THEY WOULDN'T SPEAK TO ME. I WROTE
18 THEM LETTERS.

19 THE COURT: WHAT'S WRONG WITH THE SAMPLING PROPOSAL?

20 MR. ROUNSAVILLE: THE SAMPLING PROPOSAL -- THAT RELATES
21 TO SOMETHING OTHER THAN PRIVILEGE. WE'VE GOT TWO ISSUES HERE.
22 THEY'RE VERY DIFFERENT.

23 THE COURT: WHAT ABOUT THAT?

24 MR. ROUNSAVILLE: THE SAMPLING ISSUE RELATES TO THE
25 ALLEGEDLY CONFIDENTIAL DOCUMENT. THE PROBLEM WITH THE ALLEGEDL

1 CONFIDENTIAL DOCUMENT IS NOT ONE, IN MY VIEW -- MAYBE YOU FOUND
2 ONE THAT IS.

3 THE COURT: I FOUND A FEW, AND THAT ARE TYPICAL OF
4 OTHERS.

5 MR. ROUNSAVILLE: WELL, I COULD NOT FIND ANY THAT IN MY
6 VIEW THEY COULD SHOW ESTABLISHED GOOD CAUSE, WHICH IS THE
7 STANDARD. I SAID TO THEM, "DON'T PUT THE BURDEN ON ME TO
8 IDENTIFY THE DOCUMENTS THAT YOU SAY ARE PRIVILEGED, BECAUSE WHAT
9 THEY DID IS THEY ADMITTED IN THEIR PAPERS, IS AS THEY RAN
10 EVERYTHING THROUGH THE COPY MACHINE AND DIDN'T DISTINGUISH.
11 THEY DID THAT ON 18,000 PAGES OF DOCUMENTS. WE PRODUCED 66,000
12 PAGES OF DOCUMENTS. YOU KNOW WHAT WE DID? WE TOOK OUT THE
13 DOCUMENTS --

14 THE COURT: I'M NOT INTERESTED IN "WE DID THIS".

15 MR. ROUNSAVILLE: JUST SAYING YOU CAN HAND-STAMP THOSE
16 DOCUMENTS.

17 THE COURT: I'M NOT INTERESTED IN THAT BECAUSE IT'S
18 TIT-FOR-TAT THING, SO I WANT TO FOCUS ON --

19 MR. ROUNSAVILLE: OKAY. THE POINT IS, WHEN YOU PRODUCE
20 18,000 PAGES OF DOCUMENTS, IT'S NOT THAT DIFFICULT TO RUN
21 THROUGH THE ONES THAT ARE NOT CONFIDENTIAL.

22 THE COURT: I ACTUALLY VERY STRONGLY DISAGREE WITH YU
23 ON THAT. THIS IS A CASE INVOLVING BUSINESS RELATIONS,
24 COMMERCIAL DEALINGS. WHAT'S RELEVANT TO A LOT OF THIS IS GOING
25 TO BE POTENTIALLY, AT LEAST, TRADE SECRET, AND THERE WERE A LOT

1 OF ATTORNEYS INVOLVED, A LOT COULD POTENTIALLY BE PRIVILEGED, SO
2 A LOT OF TIME AND EFFORT REQUIRED TO GO THROUGH THAT. SO I
3 DISAGREE WITH THAT POINT THAT YOU MADE, AND I ALSO DISAGREE THAT
4 BECAUSE IT'S THEIR -- AS I SAID AT THE BEGINNING, THE IDEA THAT
5 BECAUSE IT'S THEIR BURDEN, ULTIMATELY, TO UPHOLD THE
6 CONFIDENTIALITY DESIGNATION, THAT YOU DON'T HAVE TO GIVE THEM
7 SPECIFIC EXAMPLES, THAT I TOTALLY DISAGREE.

8 MR. ROUNSAVILLE: IN THE CASE THAT YOU HANDLED
9 INVOLVING REGENTS OF CALIFORNIA, THERE WERE 18,000 SOMETHING
10 PAGES, ONLY 25 PERCENT OF THEIR PRODUCTION --

11 THE COURT: I UNDERSTAND, BUT REGENTS OF CALIFORNIA IS
12 A PUBLIC UNIVERSITY. THE PERCENTAGES -- AGAIN, I'M MUCH MORE
13 INTERESTED IN SPECIFICS AND YOU HAVE CAUGHT THEM ON A NUMBER OF
14 SPECIFICS, NO DOUBT ABOUT IT, AND I THINK THAT THAT WAS
15 PROBLEMATIC ON THEIR PART; BUT I DON'T THINK, BY ANY MEANS, THAT
16 THEIR ENTIRE DESIGNATIONS ARE WRONG AND, UNFORTUNATELY, THERE IS
17 NO REALLY CLEAR-CUT WAY, OFTEN, TO DISTINGUISH BETWEEN WORK
18 PRODUCT, NON-WORK PRODUCT AT THE MARGINS, AND I THINK THAT IS
19 REFLECTED IN SOME OF THE INCONSISTENT REDACTION.

20 MR. ROUNSAVILLE: WE ARE GETTING FROM PRIVILEGE TO
21 CONFIDENTIALITY.

22 THE COURT: WELL, I THINK YOU CAN THE JUDGE IN THOSE
23 CAN'T HANDLE IT AND IS NOT GOING TO DEVOTE MORE TIME THAN I'VE
24 ALREADY SPENT, WHICH IS HOURS AND HOURS, DISTINGUISHING BETWEEN
25 THOSE FASCINATING DIFFERENT ISSUES OF DISCOVERY THAT YOU'RE

1 BRINGING UP. I MEAN -- YOU HAVE TO COME UP WITH A WAY THAT THE
2 JUDGE CAN BE HELPFUL WITHOUT THROWING EVERYTHING, THE NINE FEET
3 OF DOCUMENTS, AT MY FEET. SO I HAVE JUST GIVEN A BUNCH OF
4 GUIDANCE, AND I THINK A GOOD PROPOSAL WAS MADE.

5 WHAT IS YOUR RESPONSE ON THAT?

6 MR. ROUNSAVILLE: I HAVE NEVER HEARD ANYTHING FROM THEM
7 THAT I THOUGHT WAS CONSTRUCTIVE.

8 THE COURT: I JUST HAVE. I GUESS I WILL TELL YOU THAT
9 I THINK THAT I DO NOT BELIEVE THAT THEY'RE OPERATING, AT THIS
10 POINT AT LEAST, IN THE KIND OF BAD FAITH THAT YOU SEEM TO
11 PRESUME, AND I SEE A BREAKDOWN IN THE RELATIONSHIP, WHICH IS
12 VERY UNPRODUCTIVE. YOU HAVE ASKED FOR ME -- YOU MADE A MOTION.
13 I TOLD YOU THAT I AGREE WITH SOME OF YOUR POINTS AND DISAGREE
14 WITH A NUMBER OF THEM. SO YOU HAVE NEVER SEEN A DOCUMENT THAT
15 THEY SHOULD HAVE WITHHELD. I HAVE SEEN A NUMBER OF THEM. AS A
16 RESULT, I AM DISAGREEING WITH YOU IN PART. I AM DISAGREEING
17 WITH THEM IN PART. NOW, THE QUESTION IS, HOW DO WE MOVE
18 FORWARD? I'M NOT GOING THROUGH EVERY SINGLE DOCUMENT.

19 MR. ROUNSAVILLE: I DIDN'T MOVE ON THEIR DESIGNATION.
20 THEY DID. THEY HAVE -- THEY HAVE THE BURDEN OF PROOF. I MOVED
21 ON THE PRIVILEGE.

22 AS TO THE PRIVILEGE, THEY HAVE THE BURDEN OF
23 ESTABLISHING --

24 THE COURT: I KNOW WHO HAS THE BURDEN. ALL RIGHT?

25 WELL, I'M GOING TO ADOPT THE PROPOSAL FROM THE DEFENDANT. I AM

1 GOING TO -- I HAVE GIVEN SOME GUIDANCE. I WANT YOU NOW TO GO
2 INTO THE JURY ROOM AND WORK ON A PLAN TO TAKE THAT GUIDANCE AND
3 TRANSLATE IT INTO SPECIFICS. IF YOU WANT TO GIVE ME THE DATES
4 -- BUT I CAN TELL YOU, UNLESS SOMETHING IS VERY CURRENT, WITH
5 THE GUIDANCE I GAVE YOU ON A SPECIFIC EXHIBIT, I DON'T THINK
6 THAT THEY'RE CONFIDENTIAL.

7 ON THE BRIEFING, I WOULD LIKE TO SEE MORE INFORMATION
8 PROVIDED TO THE PLAINTIFF. I CAN MAKE THE SUGGESTION OF
9 UNREDACTING ALL BUT PLAINLY WORK PRODUCT HEADERS, BUT IF IT'S
10 JUST SUBJECT MATTER, I WOULD AGREE THAT THAT IS NOT A WAIVER FOR
11 ANYTHING FURTHER, I WOULD ORDER THAT. THEN I THINK YOU CAN
12 PROVIDE THAT. IF THERE IS A LIMITED HANDFUL OF DOCUMENTS, SAY
13 FIVE OR 10, THAT YOU WANT ME TO LOOK AT IN-CAMERA THAT YOU THINK
14 ARE PARTICULARLY BAD, I'LL DO THAT. I THINK THE PROPOSAL SHOULD
15 CONSIDER DRAWING THAT I CAN VIEW SOMETHING AS A REPRESENTATIVE
16 SAMPLE, AND ANYTHING ELSE SIMILAR TO THAT WOULD BE THE SAME
17 RULING, RATHER THAN HAVE ME GO THROUGH HUNDREDS OF DOCUMENTS.

18 MR. ROUNSAVILLE: THE PROBLEM IS THAT WE DON'T KNOW
19 WHAT THEY HAVE WITHHELD.

20 THE COURT: THAT'S WHY I'M GIVING YOU THE OPPORTUNITY
21 TO DESIGNATE A SMALL NUMBER OF DOCUMENTS THAT YOU WANT ME TO
22 REVIEW IN-CAMERA.

23 MR. ROUNSAVILLE: THEY DESIGNATED FIVE OR 600 PAGES.

24 THE COURT: YOU PICK A FEW AND WE'LL TREAT THEM AS
25 REPRESENTATIVE. I WANT YOU TO GO WORK ON A PLAN AND WE'LL CALL

1 YOU BACK. AND IF YOU CAN'T AGREE ON A PLAN YOU CAN MAKE
2 COMPLETED PROPOSALS

3 MR. ROUNSAVILLE: TODAY?

4 THE COURT: YES, RIGHT NOW, IN THE JURY ROOM.

5 I'M GOING TO ASK ONE OR TWO OF MY EXTERNS TO SIT IN
6 WITH YOU. THEY'RE LAW STUDENTS.

7

8 (PROCEEDINGS TO BE RESUMED)

9

10 THE CLERK: COUNSEL, YOU MAY COME FORWARD. RECALLING
11 C06- 2584, GABANA GULF DISTRIBUTIONS VERSUS GAP INTERNATIONAL
12 SALES, INC. ET AL.

13 MS. ANDERSON: CHRISTA ANDERSON FOR GAP.

14 WE ARE HAPPY TO REPORT WE A HAD A SUCCESSFUL MEET AND
15 CONFER. WE FIRST TALKED ABOUT SOME OF THE GUIDING PRINCIPLES
16 YOUR HONOR GAVE US AND JUST DRILLED DOWN A LITTLE MORE ON THEM
17 AND TALKED ABOUT A SCHEDULE AND HOW WE WOULD DO TO TRY TO
18 RESOLVE THE ISSUES. SO IN TERMS OF PRINCIPLES, PRINCIPLE NUMBER
19 ONE, WE'RE GOING TO BE GUIDED BY -- THE PROCESS WILL BE IN
20 REGARD TO THE HEADERS THAT CONSIST OF TWO FROM AND SUBJECT
21 LINES, THE GUIDING PRINCIPLE THAT WE WILL NOT REDACT THOSE
22 E-MAILS UNLESS IT'S OFFICIALLY A REQUEST FOR OR RESPONSE TO A
23 REQUEST FOR LEGAL ADVICE, AND WE ALSO UNDERSTAND THAT PRODUCTI
24 OF SUCH HEADERS WILL NOT CONSTITUTE A WAIVER.

25 THE COURT: CORRECT.

1 MS. ANDERSON: PRINCIPLE NUMBER TWO WE WILL BE GUIDED
2 BY WILL BE THAT STALE INFORMATION WILL NOT BE DEEMED
3 CONFIDENTIAL INFORMATION. WE HAVE DISCUSSED THE QUESTION
4 WHETHER WE CAN AGREE ON A SPECIFIC CUT-OFF DATE. ALL PARTIES IN
5 THAT REGARD ACKNOWLEDGED WHILE WE WILL TRY TO BE GUIDED BY THE
6 COURT'S INITIAL VIEW THAT YOU'RE SKEPTICAL OF CLAIMS OF
7 CONFIDENTIALITY FOR THINGS THAT PRECEDE 2007, THAT THERE MAY BE
8 INSTANCES WHERE IT MAY STILL BE SENSITIVE.

9 THE COURT: IN PARTICULAR, THE 2005 EXAMPLE YOU GAVE ME
10 WAS, BUT I THINK IT DEPENDS. I MEAN -- IT'S SORT OF A TRADE-OFF
11 ON THE MORE CORE SORT OF INFORMATION AND THE TYPE THAT COULD
12 HAVE IMPLICATIONS FOR SEVERAL YEARS, AND SOMETHING LIKE THAT
13 COULD BE KEPT, BUT AT THE SAME TIME, IN THE OPPOSITE EXTREME,
14 THE FURTHER BACK IN TIME AND THE LESS CORE STRATEGY, THERE WILL
15 BE VIRTUALLY NO ARGUMENT FOR KEEPING THAT.

16 MS. ANDERSON: ALL PARTIES SEEM TO BE ON BOARD WITH
17 THAT. WE WILL TRY TO RESOLVE ISSUES ON THE CASE.

18 THE THIRD PRINCIPLE IS THAT PHOTOGRAPHS OF PUBLIC
19 PLACES ARE NOT CONFIDENTIAL UNLESS THERE IS SOME REASON THEY
20 REFLECT SOME TRADE SECRET OR PROPRIETARY INFORMATION.

21 THE FOURTH GENERAL PRINCIPLE IS THAT COMPILATION OF
22 PURELY PUBLIC INFORMATION WILL NOT BE TREATED AS CONFIDENTIAL.

23 SO WITH THAT IN MIND, WE TALKED ABOUT, PROCEDURALLY,
24 HOW WE'LL GO ABOUT DOING THIS, AND WE'RE GOING TO TACKLE THE
25 PRIVILEGE QUESTIONS FIRST AND THEN WE'LL GO TO THE

1 CONFIDENTIALITY QUESTIONS.

2 ON PRIVILEGE QUESTIONS, GABANA'S COUNSEL WILL IDENTIFY
3 FOR US THE PARTICULAR TIME FRAMES THEY'RE PARTICULARLY
4 INTERESTED IN AND THEY'RE GOING TO BRACKET THE PERIOD MORE
5 SPECIFICALLY; BUT THEY GENERALLY SURROUND THE TIMES FRAMES WHEN
6 THE PARTIES ENTERED INTO THE TWO CONTRACTS AND THE TIME FRAME
7 WHEN THE CONTRACT WAS TERMINATED, AND WE'RE GOING TO FOCUS ON
8 ENTRIES WITHIN THAT TIME FRAME, AND IN PARTICULAR AS RELATES TO
9 THE CATEGORIES THAT WERE RAISED IN GABANA'S MOTION.

10 SO GABANA WILL PROVIDE TO GAP'S COUNSEL A LIST OF
11 ENTRIES THEY WANT TO DISCUSS THAT RELATES TO THOSE TIME FRAMES,
12 AND ONCE WE GET THE LIST, GABANA'S COUNSEL HAVE 10 DAYS TO
13 REVIEW THE LIST, EXAMINE THE DOCUMENTS, AND THEN SET UP A MEET
14 AND CONFER WITH GABANA'S COUNSEL IN PERSON WHERE WE'LL GO OVER
15 THE ISSUES TOGETHER. WE HOPE, OF COURSE, WE CAN RESOLVE THESE
16 THINGS INFORMALLY. IF FOR SOME REASON THAT THERE IS SOME
17 DOCUMENT TO WHICH WE CAN'T RESOLVE THE ISSUES, WE UNDERSTAND THAT
18 COURT HAS ORDERED THAT IN-CAMERA SUBMISSION AS TO THE LIMITED
19 NUMBER OF DOCUMENTS THAT MAY BE PERMITTED, AN ORDER THAT WE
20 UNDERSTAND THAT WOULD NOT BE A WAIVER OF ANY RELEVANT PRIVILEGE

21 THE COURT: RIGHT. I'M TALKING ABOUT FIVE OR 10, AND
22 THE PLAINTIFF COULD SELECT THE ONES THE PLAINTIFF IS THE MOST
23 CONCERNED ABOUT, AND THEN I WOULD EXPECT THAT THOSE, TO THE
24 EXTENT THEY WERE EXEMPLARS OF OTHER ADDITIONAL DOCUMENTS, THE
25 SAME RULING WOULD APPLY.

1 DO YOU AGREE?

2 MS. ANDERSON: THAT MAKES SENSE. AND WE ALSO AGREED IN
3 REGARD TO BOTH PRIVILEGE ISSUES AND IN REGARD TO CONFIDENTIALITY
4 ISSUES, THAT BEFORE ANYONE COMES BACK TO THE COURT, WE'RE GOING
5 TO HAVE ONE LAST, AT LEAST TELEPHONE CONVERSATION, WHERE WE SAY
6 -- ONE OF US SAYS, "WE'RE ABOUT TO GO BACK TO THE COURT. THIS
7 IS YOUR LAST CHANCE. CAN WE RESOLVE THIS OR NOT?" AND THEN WE
8 AGREE THAT WAS OUR FINAL CONVERSATION SO THAT WE UNDERSTAND
9 WHETHER WE'RE REALLY DONE OR NOT, MEETING AND CONFERRING.

10 THE COURT: THAT'S GOOD.

11 MS. ANDERSON: WE ALSO DECIDED ON A PROCEDURE TO
12 ADDRESS THE CONFIDENTIALITY ISSUES IN REGARD TO DOCUMENTS THAT
13 HAVE BEEN DESIGNATED HIGHLY CONFIDENTIAL BY GAP. THE PARTIES
14 HAVE AGREED THAT GABANA'S COUNSEL WILL COMMENCE THE MEET AND
15 CONFER PROCESS BY IDENTIFYING TO US IN A LIST THE HIGHLY
16 CONFIDENTIAL DOCUMENTS THEY'RE CONCERNED ABOUT AND SAME KIND O
17 10-DAY PERIOD -- GET A LIST, LOOK AT THE DOCUMENTS, AND SET UP A
18 MEET AND CONFER WITHIN THE 10 DAY PERIOD TO TRY TO RESOLVE THOSE
19 ISSUES.

20 ONCE WE HAVE TAKEN CARE OF THE PRIVILEGE QUESTIONS,
21 HIGHLY CONFIDENTIAL QUESTIONS, WE'RE GOING TO MOVE ON TO ADDRESS
22 THE CONFIDENTIALITY DESIGNATION. AND THE IDEA HERE IS THAT WE
23 ALL ACKNOWLEDGE THAT WE'RE GOING TO TRY TO FOCUS ON THINGS THAT
24 ARE MORE GERMANE TO THE ISSUES AND NOT SPEND A LOT OF TIME
25 FIGHTING OVER DOCUMENTS THAT NOBODY WILL EVER BE USING IN THIS

1 CASE.

2 SO IF THE PARTIES AGREE THAT WE'RE GOING TO FOCUS ON
3 DOCUMENTS THAT HAVE BEEN DESIGNATED CONFIDENTIAL THAT CONSIST C
4 COMMUNICATIONS INVOLVING OR MENTIONING GABANA, OR WE ALSO MAY
5 COME UP WITH SOME SORT OF DATE TO FOCUS THE INQUIRY, BECAUSE
6 MORE RECENT DOCUMENTS ARE MORE LIKELY TO BE CONFIDENTIAL THAN
7 THE OLDER DOCUMENTS, BUT THAT PROPERTY SETTLEMENT BEGINS LATER
8 AND I THINK WE WILL KNOW A LITTLE MORE HOW WE GO ABOUT IT. BUT
9 WE AGREE WE WILL FOCUS ON THOSE AND GO THROUGH THE PROCESS OF
10 REDESIGNATION.

11 ONE LAST THING I FAILED TO MENTION. IN TERMS OF THE
12 UNREDACTION OF THE HEADER INFORMATION, GABANA'S COUNSEL WILL GE
13 BACK TO US WHETHER THEY ARE SEEKING THAT WE DO IT FOR EVERY
14 SINGLE DOCUMENT REGARDLESS OF WHETHER THEY'RE RELEVANT OR
15 WHETHER THEY FOCUS ON THE UNREDACTED THINGS THEY CARE ABOUT.
16 THEY WILL ADVISE US.

17 THE COURT: I WOULD SAY THERE IS A DIFFERENCE -- THE
18 COURT GETS INVOLVED IN REDESIGNATING DOCUMENTS WHEN THEY'RE
19 GOING TO BE USED IN COURT. THAT'S WHEN THE COURT COMES INTO
20 PLAY. IT DOESN'T USUALLY GETS INVOLVED IN REDESIGNATING
21 DOCUMENTS THAT WEREN'T GOING TO BE USED. I RECOGNIZE THIS CAN
22 BE EXTREMELY INCONVENIENT, SEEING THAT THE DOCUMENTS AREN'T
23 FILED, IF YOU'RE GOING TO NEED THEM AT DEPOSITIONS.

24 MS. ANDERSON: WE ALSO ENCOURAGED GABANA WE'RE GOING TO
25 FOCUS ON THE REDESIGNATION OF CONFIDENTIALITY THAT CONCERNS THE

1 COMMUNICATIONS, AS I MENTIONED, WITH THE DIFFERENT PARTIES. BUT
2 WE AGREED THAT'S WITHOUT PREJUDICE. IF THERE IS A DOCUMENT THAT
3 DOESN'T FALL WITHIN THAT CATEGORY, THEY CAN BRING IT BACK AND WE
4 CAN ADDRESS THAT PARTICULAR DOCUMENT. MY ONLY QUESTION TO THE
5 COURT IS SORT OF, PROCEDURALLY, HOW THESE MOTIONS WILL BE
6 TREATED IN TERMS OF --

7 THE COURT: I GUESS -- I MEAN -- I DON'T KNOW. I COULD
8 JUST DENY THEM WITHOUT PREJUDICE. I MEAN -- I'M NOT STRIKING--
9 NOT STRIKING ANYTHING BROADLY, OTHER THAN THE SPECIFIC RULING I
10 MADE. I DON'T KNOW. WHAT WOULD YOU PROPOSE?

11 MS. ANDERSON: IN REGARD TO THE CONFIDENTIALITY
12 DESIGNATION MOTION WE BROUGHT, AS COUNSEL STATED EARLIER, THE
13 ONLY REASON WE BROUGHT IT IS BECAUSE UNDER THE PROTECTIVE ORDER
14 WE'RE THE PARTY THAT HAS TO FILE THE MOTION AND IT MIGHT MAKE
15 SENSE TO -- I DON'T KNOW IF THE COURT CAN STAY RESOLUTION OF THE
16 PROCEEDINGS OR POSTPONE 'TILL WE SEE IF --

17 THE COURT: I DON'T WANT IT TO KEEP HANGING AROUND ON
18 THE DOCKETS AS AN UNRESOLVED MATTER. I WOULD DENY IT WITHOUT
19 PREJUDICE OR GRANT IT IN PART JUST THERE IS NO BLANKET
20 OVERRULING CONFIDENTIALITY DESIGNATIONS, BUT SUBJECT TO THE
21 AGREEMENT THERE WILL BE, IF THAT WAS RECITED ON THE RECORD
22 TODAY. THERE WILL BE A FURTHER REFINEMENT. MAYBE YOU COULD
23 PREPARE AN ORDER ON THAT BASIS.

24 MS. ANDERSON: GREAT.

25 THE COURT: THEN I GUESS THE OTHER THING I NEED TO DO

1 IS THE SEALING. FOR EXAMPLE, YOU KNOW, I AM NOT GOING TO ALLOW
2 ALL THE THINGS TO BE SEALED, FOR THE REASONS I STATED BEFORE.
3 BUT SOME OF THEM -- FOR EXAMPLE, TAKE THAT ISSUE OF THE TRAVEL
4 RECORDS. I DON'T KNOW IF YOU DISCUSSED HOW YOU WANT TO DO THAT,
5 BECAUSE I GUESS I COULD ALLOW YOU TO SEAL IT FOR THE TIME BEING.
6 A LOT OF IT IS NOT REALLY SEALABLE. I DON'T THINK IT'S REAL
7 CONFIDENTIAL. ON THE OTHER HAND, THINGS LIKE SOMEBODY'S
8 PERSONAL -- FOR EXAMPLE, THE FREQUENT FLYER NUMBER OR TELEPHONE
9 NUMBER THEY CALL FROM A HOTEL ROOM, WHICH MIGHT BE FAMILY, AS
10 OPPOSED TO PUBLIC BUSINESS, I DON'T KNOW THAT ANY OF THAT
11 INFORMATION IS WORTH ALL THE TROUBLE THAT -- WHETHER YOU HAD
12 DISCUSSION ABOUT THAT REDACTING -- BECAUSE THAT'S EXPENSIVE TO
13 DO AND MAY JUST NOT BE PARTICULARLY GERMANE.

14 MS. ANDERSON: WE DIDN'T ADDRESS THAT. IT'S SOMETHING
15 I WOULD LIKE A VERY BRIEF OPPORTUNITY TO RUN BY MY CLIENT. MAY
16 WE, WITHIN A CERTAIN VERY LIMITED NUMBER OF DAYS, SUBMIT IN
17 WRITING TO THE COURT, BASED ON THE COURT'S GUIDANCE, WE WITHDRAW
18 THE CONFIDENTIALITY ON THE FOLLOWING DOCUMENTS IF --

19 THE COURT: THAT WILL BE FINE.

20 MS. ANDERSON: AND WHAT TIME PERIOD DOES THE COURT
21 PREFER?

22 THE COURT: THE SOONER THE BETTER, BECAUSE IT'S
23 SOMETHING I PREFER TO FORGET AS SOON AS POSSIBLE.

24 MS. ANDERSON: SEVEN DAYS?

25 THE COURT: AT THE MOST, YES.

1 THEN ON THE -- AND I GUESS THE OTHER MOTION,
2 PLAINTIFF'S MOTION TO COMPEL DOCUMENTS -- I GUESS THAT'S
3 ESSENTIALLY GRANTED IN PART AND DENIED IN PART, AGAIN, SUBJECT
4 TO THE PROCEDURE AGREED UPON HERE.

5 SO YOU BOTH PREPARE AN ORDER TO THAT EFFECT SUBJECT TO
6 THIS PROCEDURE. IF YOU WANT TO SET FORTH WHAT YOU JUST SAID,
7 YOU CAN. WE'LL HAVE THE TRANSCRIPT IF WE NEED IT.

8 MS. ANDERSON: WE SHOULD EXCHANGE PROPOSED ORDERS
9 BEFORE WE SUBMIT?

10 THE COURT: YES. PLEASE SUBMIT IT NO LATER THAN THE
11 END OF THE WEEK.

12 MS. ANDERSON: WONDERFUL.

13 THE COURT: ALL RIGHT. ANYTHING FURTHER?

14 MR. ROUNSAVILLE: NO.

15 MS. ANDERSON: NO.

16 THE COURT: THANK YOU.

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8 I CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE

9 TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER.

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19 JUANITA GONZALEZ

20 CSR NO. 3003

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